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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by the Andean Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 February 1998]

GE.98-10866 (E)

National institutions for the promotion and protection of human rights in the Andean region

1. Ombudsmen and constitutional courts are both autonomous national institutions independent of other agencies of the State. They need to be independent in order to carry out their essential functions of supervising the exercise of power, as well as promoting and protecting human rights. The office of the ombudsman (defensoría del pueblo) is an institution charged with ensuring respect for basic rights vis-à-vis the public administration. Constitutional courts are bodies which are entrusted with ensuring respect for the constitutional system and whose functions include protecting basic rights by dealing with amparo or habeas corpus proceedings and other constitutional safeguards.

The Office of the ombudsman

2. The office of the ombudsman is of vital importance in consolidating the rule of law since it promotes an awareness of citizens' rights that encourages them to be respected by the State and private individuals. The Andean Commission of Jurists has been working closely with the countries of the region to promote the establishment and development of such institutions.

3. In Bolivia an Act defining the functions and powers of the Ombudsman was passed recently. This Act represents a positive step and the Andean Commission of Jurists has cooperated on a continuing basis in the establishment of this institution in Bolivia. It is to be hoped that the election of the Ombudsman will take place shortly, without any influence from partisan interests.

4. In Ecuador the Congress passed the Office of the Ombudsman Organization Act last year and shortly afterwards appointed its incumbent. However, the latter tendered his resignation in view of the intentions of the Congress to reduce his period of activity, in contravention of the Constitution. At present the status of the Office of the Ombudsman is rather uncertain. Almost a year after its approval, the institution has still not begun work and an assembly is drafting a new constitutional text.

5. In Colombia and Peru, the institutional work of the respective offices of ombudsman has continued to be consolidated and effective action has been carried on for the defence and protection of human rights. The most important achievements in the two countries have involved the use of constitutional procedures to guarantee human rights and the application of constitutional safeguards - especially the writ of protection for constitutional rights (tutela), in the case of Colombia. In the case of Peru, the Office of the Ombudsman managed, in the first 18 months of work, to win a substantial degree of acceptance by the public, which has lent the institution greater popular legitimacy. Its action has focused in large part on complaints from citizens directly related to the ongoing process of privatization. The Andean Commission of Jurists has actively supported the development of this institution since its inception and is continuing to provide it with advice in various areas.

The constitutional courts

6. It is also necessary, in our view, to consider the region's achievements and setbacks in the development of constitutional courts as bodies charged with ensuring respect for the Constitution and the basic rights enshrined therein.

7. We welcome the way in which the Constitutional Court of Colombia exercised its functions in 1997, making it the most solid institution for the defence of the Constitution in the whole region. Since the beginning of its activities in 1992 it has developed a large body of case law on basic rights and has handed down important decisions to protect them against attacks from the State or private individuals. The Court's judgements have continued to make news by virtue of its creative capacity in safeguarding constitutional values that the dramatic situation in Colombia has tended to negate. On many occasions, it has thus had to confront and overcome pressures from politicians, the armed forces and even the highest religious authorities.

8. The situation is very different in Ecuador and Peru, where political conflicts have led to developments that compromise aspects of the integrity of the constitutional system. In the course of 1997 the constitutional courts of both countries were subjected to serious interference, to the point where some of their members (all the members in the case of Ecuador) were removed from office.

9. In Ecuador, the Congress dismissed all the judges of the Constitutional Court following the removal of the President of the Republic from office. An ad hoc commission later selected and proposed new judges for approval by the Congress. However, the Court's independence and stability is threatened by a law which gives the Congress the power to relieve its members of their duties if they do not take action on a request within a period of 60 days.

10. In the case of Peru, the crisis of the Constitutional Court is still unresolved and this body cannot carry out its essential function of examining the constitutionality of laws. In May 1997, a little less than a year after taking office, three of the Court's six judges were removed by the Congress. This action was due to a proceeding brought for alleged contravention of the Constitution. The three judges had found inapplicable to the President of the Republic, Alberto Fujimori, the law interpreting article 112 of the Constitution in such a way as to enable the presidential incumbent to be elected for a third term despite the fact that the Constitution only allows for two terms of office. The removal of the three judges was an enormous setback for the rule of law in that country. Civil society saw the action of the Congress as overt interference with the autonomy and independence of the principal body concerned with protecting the constitutional system, an action which has resulted in a weakening of one of the most important institutions for the protection of citizens in Peru.

11. In Chile and Venezuela, the situation remains largely unchanged. The Constitutional Court of Chile exercises the limited powers vested in it by the Constitution, which do not provide for it to intervene in proceedings aimed at the protection of basic rights or for it to deal with motions of unconstitutionality against laws approved by the Congress and promulgated by

the President. In Venezuela there has been no proposal for constitutional reform to create a system for the thorough review of issues of constitutionality.

12. It is important to emphasize that ombudsmen and constitutional courts have a fundamental role to play in the development of democracy in the region. Democracy may be said to exist only in a State governed by the rule of law, where the Constitution sets limits to the exercise of power within the context of respect for basic rights. The functioning of bodies which supervise the exercise of power will therefore help to improve the conditions for the protection of human rights. The cooperation of the international community is thus essential in providing advisory services to support the consolidation and strengthening of such institutions.

13. The participation of organized civil society is likewise very important, since it contributes to enhancing the legitimacy and effectiveness of these supervisory bodies. The experience gained by the Andean Commission of Jurists in recent years demonstrates that it is only when the citizen views these institutions as his own that they can contribute to ensuring that the rule of law in the Andean region is not limited to statutes but has a positive influence in the everyday lives of human beings.